

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
AT NASHVILLE**

|  |   |                                       |
|--|---|---------------------------------------|
| <b>LOUISIANA-PACIFIC CORPORATION,</b>  | ) |                                       |
|  | ) |                                       |
| <b>Plaintiff,</b>                      | ) |                                       |
|  | ) |                                       |
| <b>v.</b>                              | ) | <b>CIVIL ACTION NO. 3:18-cv-00447</b> |
|  | ) |                                       |
| <b>JAMES HARDIE BUILDING PRODUCTS,</b> | ) | <b>JUDGE MCCALLA</b>                  |
| <b>INC.,</b>                           | ) |                                       |
|  | ) | <b>JURY DEMAND</b>                    |
| <b>Defendant.</b>                      | ) |                                       |

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**DECLARATION IN SUPPORT OF PLAINTIFF LOUISIANA-PACIFIC’S MOTION  
FOR PRELIMINARY INJUNCTION**

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I, Lance Olson, declare and state as follows:

1. I am employed by Louisiana-Pacific Corporation (“LP”) as \_Technical Director, Field Sales. I am over the age of eighteen and have personal knowledge of the facts set forth in this declaration.

2. Work history and experience: Thirty years with Louisiana Pacific in the siding and building products business. Some of my duties and experience include Quality Management, Production Management, Code Compliance, Product Application Engineering, Research & Development, Safety Management, Environmental Compliance, Supply Chain Management, and Technical Sales Management. I have a BA in Business Administration, Quality Engineer Certificate.

3. Hardie’s advertisements consistently refer to LP’s SmartSide® strand-based engineered wood siding products as “OSB”, ostensibly meant to stand for “Oriented Strand Board”

but obviously referencing LP siding products, as LP is Defendant's leading competitor and synonymous in the industry with strand-based engineered wood siding.

4. LP is a Delaware corporation with a principal place of business in Nashville, Tennessee that manufactures and distributes building supplies, including exterior siding products.

5. Since 1972, LP has been a market leader in the manufacture and distribution of building materials, including exterior siding products.

6. LP is currently the undisputed leading manufacturer of strand-based engineered wood siding products in the United States.

7. LP markets and sells its current line of strand-based engineered wood siding under the SmartSide® brand.

8. LP has invested significant time, money, and resources on the research and development of its strand-based engineered wood siding, and it continues to develop new innovations, including but not limited, innovations to stand up to pests and moisture.

9. The SmartSide® products are treated with a proprietary zinc borate-based process that resists damages from fungal decay and termites.

10. To put the termite resistance of LP siding products to the test, LP exposed samples to Formosan termites, widely recognized as one of the world's most destructive pests.

11. Each sample is placed on a grid, surrounded by untreated bait samples, then laid directly on top of termite colonies.

12. After three years, the LP SmartSide® siding showed no structural damage, while the bait samples were completely destroyed within three months.

13. LP's SmartSide® products are treated to the core with LP's proprietary SmartGuard® process that resists weather-related damage and moisture damage.

14. LP SmartSide® siding has undergone brutal testing in Hilo, Hawaii.

15. An average temperature of more than 70 degrees, high levels of humidity and almost 170 inches of annual rainfall make Hilo's climate the perfect breeding ground for wood's worst enemies – termites, moisture and fungal decay.

16. Even after many years of exposure, LP SmartSide products continue to perform. Field performance of LP SmartSide strand siding does not support the Hardie claims and strict internal and 3<sup>rd</sup> party quality assurance ensures consistency with the prescriptive and performance requirements in acceptance criteria in AC321.

17. To the best of my knowledge and information, James Hardie Building Products, Inc. manufactures and distributes building supplies, including exterior siding products.

18. Defendant markets its fiber cement siding products as alternatives to LP's strand-based engineered wood siding products.

19. To the best of my knowledge and information, Defendant markets its siding products to distributors, retailers, subcontractors, contractors, and directly to end consumers through printed advertising, websites (e.g., [www.nowoodisgood.com](http://www.nowoodisgood.com), [www.jameshardie.com](http://www.jameshardie.com)), industry and trade gatherings, direct marketing, and other means.

20. Defendant recently launched its "No Wood Is Good" advertising campaign.

21. Upon information and belief, Defendant or its agent(s) first registered the domain name for [nowoodisgood.com](http://nowoodisgood.com) on February 15, 2018. A true and correct copy of a screen capture from a WhoIs search is attached hereto as Exhibit 1.

22. The campaign includes the [www.nowoodisgood.com](http://www.nowoodisgood.com) website, a number of advertisements on the internet (e.g. advertisements that appear on trade publication websites), and printed marketing materials.

23. In the advertisements and materials, Defendant refers to competitors' wood-based siding products as "OSB" (to abbreviate Oriented Strand Board), "engineered wood", "engineered wood product" or simply as "wood."

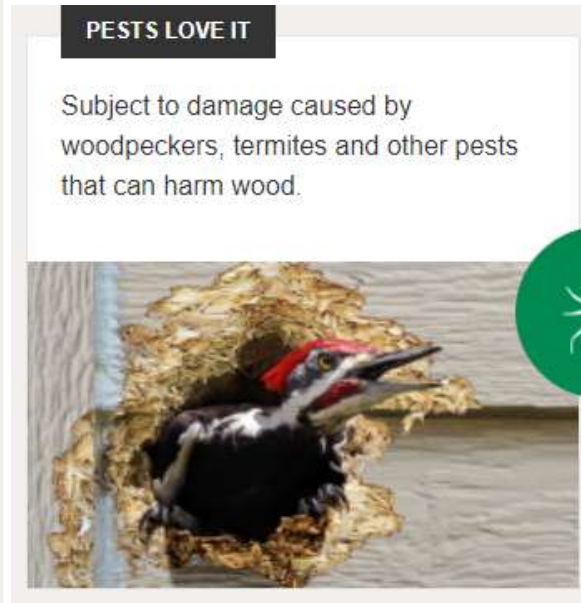
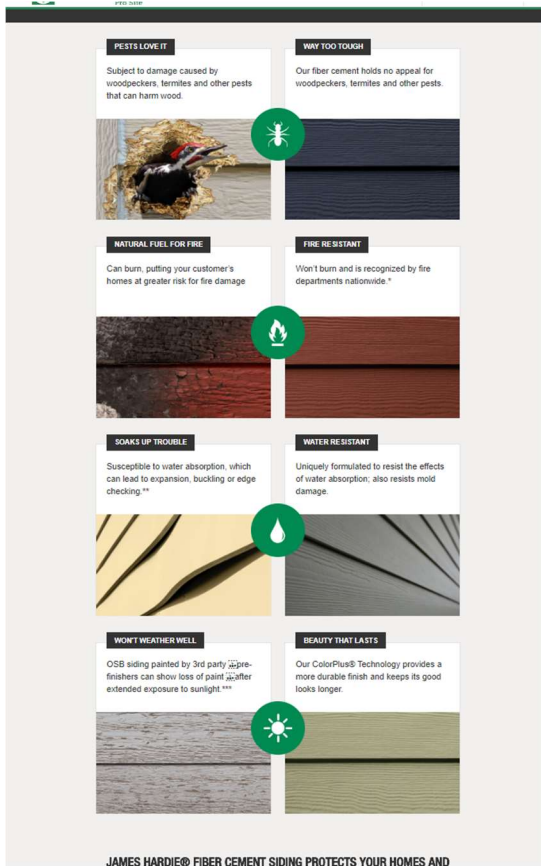
24. Although Defendant may attempt to argue that the campaign is directed to all wood siding products, the implication is clear based on the pictures in the campaign.

25. Defendant predominantly features what appears to be LP's products.

26. To the best of my knowledge and information, Defendant's largest competitor in the siding market is LP.

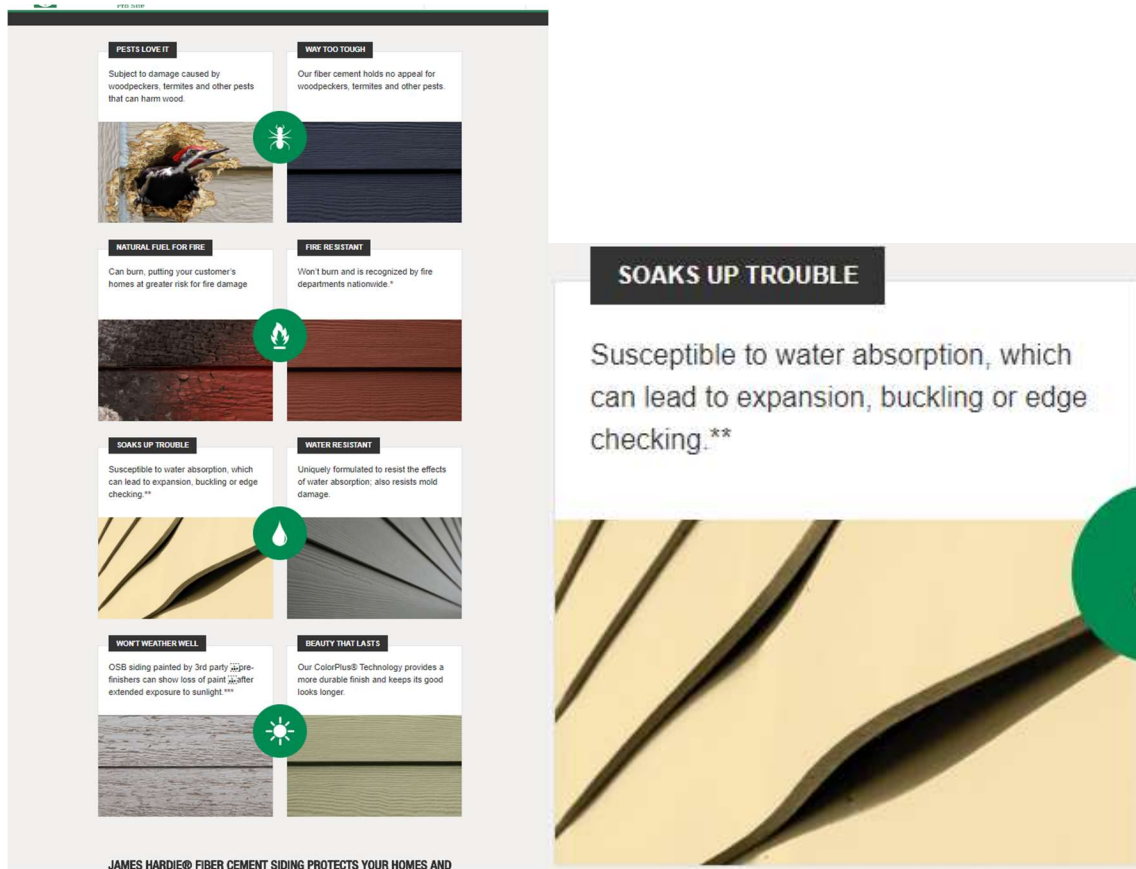
27. On Defendant's website, [www.nowoodisgood.com](http://www.nowoodisgood.com), there is a graphic with two columns under the title "The Ugly Truth About OSB Siding" followed by the sentence: "No matter how it is treated or processed, it still acts like wood." A true and correct copy of the website located at [www.nowoodisgood.com](http://www.nowoodisgood.com) is attached hereto as Exhibit 2.

28. Below the primary phrase on the [nowoodisgood.com](http://www.nowoodisgood.com) website are two columns of captioned graphics under the heading "OSB SIDING VS. JAMES HARDIE SIDING", and the opposing captioned graphics purport to demonstrate the alleged advantages of Defendant's fiber cement siding over "OSB" siding:



The top comparative row shows a layered “doctored” image of a woodpecker penetrating LP’s strand-based engineered wood siding. A careful inspection reveals that the image and video were fabricated.

29. Additionally, in that same website graphic, Defendant displays a picture of warped exterior siding under the “OSB” column, with the caption “SOAKS UP TROUBLE” as shown below:



Even though the picture does not show strand-based engineered wood siding, the picture and caption imply that LP's strand-based engineered wood siding is vulnerable to weather damage that would cause warping and buckling.

30. The thickness of LP's strand-based engineered wood siding ranges between 0.312 inches and 0.375 inches. A true and correct copy of a product specification sheet is attached hereto as Exhibit 3.

31. LP's strand-based engineered wood siding is installed over a moisture barrier and attached to either structural framing or wood structural panels or other structural assemblies. A true and correct copy of standard installation instructions are attached hereto as Exhibit 4.

32. Upon information and believe, Defendant's marketing materials for both the "No Wood Is Good" advertising campaign and other advertising campaigns have been distributed beyond Defendant's principal place of business in Chicago, Illinois.

33. LP has prospective relationships with third persons, easily identifiable as homeowners and business owners who are in the market for quality exterior siding.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on this 8th day of June 2018.

A handwritten signature in black ink, appearing to read "Lance Olson", written over a horizontal line.

Lance Olson

Respectfully submitted,

/s/ Samuel F. Miller

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 11<sup>th</sup> day of June 2018, a copy of the foregoing was served on counsel of record listed below via email and U.S. Mail:

Maia T. Woodhouse  
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/s/ Samuel F. Miller

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